

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Goodin, John[Goodin.John@epa.gov]
Cc: Downing, Donna[Downing.Donna@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]
Sent: Fri 3/17/2017 1:59:18 PM
Subject: RE: WOTUS-2 Briefing Materials

Attorney Client / Ex. 5

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Eisenberg, Mindy
Sent: Friday, March 17, 2017 8:52 AM
To: Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: WOTUS-2 Briefing Materials

I'm reviewing the documents in sharepoint right now.

Thanks!

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Goodin, John
Sent: Friday, March 17, 2017 7:46 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: Re: WOTUS-2 Briefing Materials

Thanks for the late night dedication, Steve! Very helpful comments. Here are a few quick reactions...

Agree we should caucus this afternoon. If need be I can cede most of a previously scheduled hour w Mike at 3p that could allow flexibility in his schedule to accommodate yours.

I think Mindy would be a sharp eyed editor for the docs this morning and will confirm with her.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Thanks again for the great work
John

Sent from my iPhone

On Mar 17, 2017, at 12:20 AM, Neugeboren, Steven <Neugeboren.Steven@epa.gov> wrote:

Some last input of the day from me.

First a few suggestions and requests, then a description of my comments on two documents I reviewed tonight

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Regarding general points/suggestions/a request:

Deliberative Process / Ex. 5

Also, I suggest the documents get a careful proofread. Can someone from wetlands do that?

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Attorney Client / Ex. 5

Attorney Client / Ex. 5

Attorney Client / Ex. 5

Nite.

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Downing, Donna

Sent: Thursday, March 16, 2017 5:58 PM

To: Campbell, Ann <Campbell.Ann@epa.gov>

Cc: Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>

Subject: WOTUS-2 Briefing Materials

Hi Ann –

Deliberative Process / Ex. 5

Here's a link to the Sharepoint folder where these attached documents reside in case Steve or others want to continue editing:

Nonresponsive Internal URL/ Ex. 6

Donna Downing
Acting Chief, Wetlands and Aquatic Resources Regulatory Branch
Office of Wetlands, Oceans & Watersheds
U.S. Environmental Protection Agency
ph: (202) 566-1367
downing.donna@epa.gov

USPS Address:
1200 Pennsylvania Avenue, NW
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Delivery Address:
1301 Constitution Avenue, NW, room 7214-D
Washington, DC 20004

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Shapiro, Mike[Shapiro.Mike@epa.gov]
Cc: Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Simma Kupchan[Kupchan.Simma@epa.gov]; Carrie Wehling[Wehling.Carrie@epa.gov]; Karyn Wendelowski[wendelowski.karyn@epa.gov]
From: Neugeboren, Steven[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CFD837AC503949A9820715B53BA921E6-SNEUGEBO]
Sent: Fri 5/26/2017 1:03:13 AM (UTC)
Subject: RE: responding to OMB's comments on draft proposed rule



Attorney Client / Deliberative Process / Ex. 5

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Eisenberg, Mindy
Sent: Thursday, May 25, 2017 6:08 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>
Cc: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: responding to OMB's comments on draft proposed rule

Thanks Mike

Attorney Client / Deliberative Process / Ex. 5
Attorney Client / Deliberative Process / Ex. 5

Mindy

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Shapiro, Mike

Sent: Thursday, May 25, 2017 5:50 PM

To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Cc: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>

Subject: RE: responding to OMB's comments on draft proposed rule

Mindy,

Attorney Client / Deliberative Process / Ex. 5

Mike

Michael Shapiro
Acting Assistant Administrator, Office of Water
US EPA, 4101M
1200 Pennsylvania Ave., NW
Washington, DC 20460
202-564-5700

From: Eisenberg, Mindy

Sent: Thursday, May 25, 2017 4:49 PM

To: Shapiro, Mike <Shapiro.Mike@epa.gov>

Cc: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>

Subject: responding to OMB's comments on draft proposed rule

Mike,

EPA/Corps/Army staff have reviewed the interagency comments and have addressed most of those comments (see attached which shows comments and track-changes; Julie H has a few additional edits underway). There are four key issues that we are raising for your attention and for feedback before sharing with senior leadership. We've summarized each outstanding issue, plus our recommended approach to addressing each issue. Please let me know how you would like to proceed in sharing with Sarah and others.

Thanks

Attorney Client / Deliberative Process / Ex. 5

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Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

To: Carrie Wehling[Wehling.Carrie@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Neugeboren, Steven
Sent: Fri 4/21/2017 7:24:06 PM
Subject: correspondance on corps JD - fyi
[17-000-7640.pdf](#)

FYI – controlled correspondence that ogc received as courtesy copy. Assume was controlled to ow.

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Veney, Carla
Sent: Friday, April 21, 2017 11:48 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>
Cc: Shaw, Carla <Shaw.Carla@epa.gov>
Subject: Emailing - 17-000-7640.pdf

Steve, this was sent to OGC as an cc. Thanks.

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Shapiro, Mike[Shapiro.Mike@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Simma Kupchan[Kupchan.Simma@epa.gov]; Karyn Wendelowski[wendelowski.karyn@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]
From: Neugeboren, Steven
Sent: Tue 4/18/2017 1:57:16 PM
Subject: RE: WOTUS Federalism Meeting draft materials

Consistent with my suggestions at the meeting today, for your consideration regarding Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Eisenberg, Mindy
Sent: Monday, April 17, 2017 5:29 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Subject: WOTUS Federalism Meeting draft materials

Hi Sarah,
Attached are draft materials for Wednesday’s federalism meeting for your review. We have the agenda, what we’re calling the “run of show” which has your talking points and the flow that we will follow, and the powerpoint. I want to flag slides 9-12 in particular for your review. We are approaching this as Deliberative Process / Ex. 5
Deliberative Process / Ex. 5 so please let me know if you are comfortable.

The powerpoint will be distributed to those on the phone just before the meeting begins, and the conference number will be sent out on Wednesday. In addition, we will be using an operator assisted number which will require participants to say who they are and their affiliation to try to minimize the chance of uninvited guests attending.

We understand that you had a question about Deliberative Process / Ex. 5 Here is a statement that we developed with OCIR in case OPA receives requests.

Thanks!

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Christensen, Damaris
Sent: Monday, April 17, 2017 5:18 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: WOTUS Federalism Meeting Agenda.docx

Mindy,

Attached are draft materials for Wednesday's federalism meeting: a draft agenda, a draft "run of show" with TPs for senior leaders, and the draft powerpoint. I think slides 9-12 are probably the key ones for senior-level review though of course we welcome any changes.

Please note that we've learned over the course of our federalism consultations that it is important to distribute the powerpoint and plan to have paper copies available at the meeting. In addition, we will distribute a pdf of the presentation just before the meeting begins so those calling in can follow along.

Thanks.

Damaris

To: Shapiro, Mike[Shapiro.Mike@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Sawyers, Andrew[Sawyers.Andrew@epa.gov]; Nagle, Deborah[Nagle.Deborah@epa.gov]; Elizabeth Southerland[Southerland.Elizabeth@epa.gov]
From: Neugeboren, Steven
Sent: Mon 3/20/2017 1:33:18 PM
Subject: FW: OGC assessment of legal issues in WOTUS rulemaking

Below fyi is a legal assessment we prepared for the third floor.

Deliberative Process / Attorney Client Ex. 5

Deliberative Process / Attorney Client Ex. 5

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Neugeboren, Steven
Sent: Sunday, March 19, 2017 6:45 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Schwab, Justin <schwab.justin@epa.gov>; Kevin Minoli <Minoli.Kevin@epa.gov>; Karyn Wendelowski <wendelowski.karyn@epa.gov>; Carrie Wehling <Wehling.Carrie@epa.gov>; Simma Kupchan <Kupchan.Simma@epa.gov>
Subject: OGC assessment of legal issues in WOTUS rulemaking

Predecisional/Attorney-Client Privileged

Deliberative Process / Attorney Client Ex. 5

Deliberative Process / Attorney Client Ex. 5

Deliberative Process / Attorney Client Ex. 5

Deliberative Process / Attorney Client Ex. 5

Deliberative Process / Attorney Client Ex. 5

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

To: Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
Cc: Shapiro, Mike[Shapiro.Mike@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Best-Wong, Benita[Best-Wong.Benita@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Wendelowski, Karyn[wendelowski.karyn@epa.gov]
Sent: Tue 4/18/2017 2:55:01 PM
Subject: RE: WOTUS Federalism Meeting draft materials

Deliberative Process / Ex. 5

Gregory E. Peck
Chief of Staff
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, D.C. 20460

202-564-5700

From: Neugeboren, Steven
Sent: Tuesday, April 18, 2017 9:57 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

Consistent with my suggestions at the meeting today, for your consideration regarding

Deliberative Process / Ex. 5

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Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Eisenberg, Mindy
Sent: Monday, April 17, 2017 5:29 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Subject: WOTUS Federalism Meeting draft materials

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Thanks!
Mindy

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Christensen, Damaris
Sent: Monday, April 17, 2017 5:18 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: WOTUS Federalism Meeting Agenda.docx

Mindy,

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Please note that we've learned over the course of our federalism consultations that it is important to distribute the powerpoint and plan to have paper copies available at the meeting. In addition, we will distribute a pdf of the presentation just before the meeting begins so those calling in can follow along.

Thanks.

Damaris

To: Peck, Gregory[Peck.Gregory@epa.gov]
From: Kwok, Rose
Sent: Wed 3/15/2017 12:40:25 PM
Subject: WOTUS2 briefing paper 3.14.17 - clean.docx
WOTUS2 briefing paper 3.14.17 - clean.docx

To: Nandi, Romell[Nandi.Romell@epa.gov]
Cc: Able, Tony[Able.Tony@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Goodin, John[Goodin.John@epa.gov]; Kwok, Rose[Kwok.Rose@epa.gov]; Christensen, Damaris[Christensen.Damaris@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Peck, Gregory[Peck.Gregory@epa.gov]; Campbell, Ann[Campbell.Ann@epa.gov]
From: Downing, Donna
Sent: Tue 2/7/2017 10:12:44 PM
Subject: For review & forwarding: draft powerpoint for "waters of the US" briefing on Thursday
Powerpoint -- Transition briefing Clean Water Rule v2.pptx

Hi Romell (with a cc to the usuals):

Attached please find the draft powerpoint on waters of the United States and the Clean Water Rule, for use at the briefing this Thursday. Could you please forward it to OW? The attached reflects input from

Deliberative Process / Ex. 5

If reviewers have any comments or suggestions, please let me know asap. Thanks!

Donna

Donna Downing

Jurisdiction Team Leader

Office of Wetlands, Oceans & Watersheds

U.S. Environmental Protection Agency

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Washington, DC 20460

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1301 Constitution Avenue, NW, room 7214-D

Washington, DC 20004

“Waters of the United States” and the Clean Water Rule

February 9, 2017

Overview of Presentation

- **Waters of the US in context**
 - CWA programs
 - Section 404 program
 - Longstanding regulations
 - Legal challenges
- **The Clean Water Rule**
 - Scientific basis
 - Rulemaking process
 - Content of CWR
 - Litigation

“Waters of the US” and the Clean Water Act



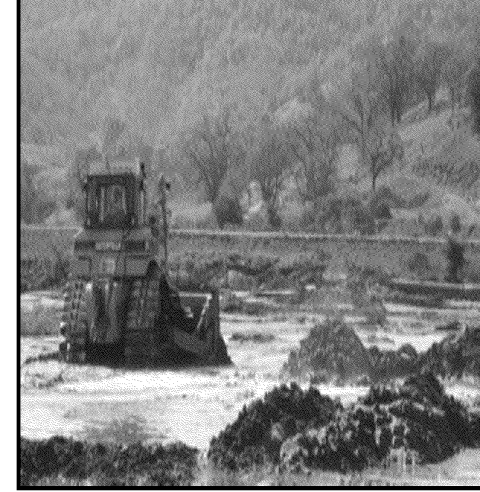
- “Waters of the US” (WUS) is a threshold term under the Clean Water Act (CWA) for the scope of the Act
- All CWA programs address “navigable waters,” defined in the statute as “waters of the United States including the territorial seas”
 - CWA did not define WUS; Congress left further clarification to agencies
- EPA and the Army Corps have defined WUS by regulation since the 1970s. The regulatory definition in place before the CWR dates to the mid 1980s
- Two U.S. Supreme Court decisions since that 1980s regulatory definition did not invalidate the definition, but shaped its implementation across all CWA programs

“Waters of the US” and the Clean Water Act, continued



- CWA establishes many programs to protect quality of WUS:
 - Section 303(c): state-developed water quality standards setting waters' quality goals
 - Section 303(d): “Total Maximum Daily Load” (TMDL) plans to bring waters into compliance with water quality standards
 - Section 311: oil spill prevention and clean-up
 - Section 401: state/tribal certification that federal permits and licenses are consistent with CWA and local requirements
 - Section 402: “NPDES” permit program for “end of pipe” discharges of liquid wastes from sources such as factories, sewage treatment plants
 - Section 404: permit program for discharges of dredged/fill material

WUS and Section 404



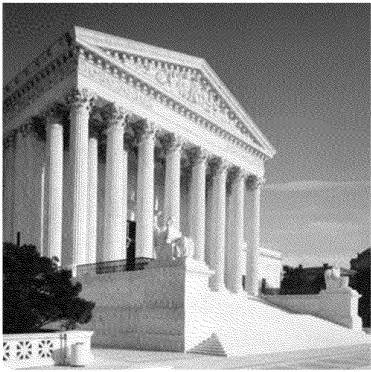
- Same definition of WUS applies to section 404 as other CWA programs
- Since 1972 the Army Corps and EPA have jointly implemented the program to significantly reduce the ongoing loss of wetlands and streams, while authorizing tens of thousands of dredged/fill activities annually
 - Congress tasked the Army Corps with operating the 404 permit program and EPA with developing the environmental review criteria under which permits would be evaluated
 - EPA and the Army Corps have jointly developed the definition of WUS, while EPA has the final policy responsibility for its scope

WUS and Section 404, continued

- The Army Corps makes the vast majority of jurisdictional determinations (JDs)
 - This is in part why WUS issues so often arise in the section 404 context
 - However, court decisions about the scope of WUS also have involved the section 402 NPDES and section 311 oil spill clean-up programs
- Even if dredge/fill discharges are into a WUS, a 404 permit might not be required if activity is excluded under 404(f)
 - For example, discharges associated with ongoing farming activities such as plowing, seeding, and cultivation typically do not need a 404 permit

WUS and its Longstanding Regulatory Definition (dates to mid-1980s)

- This is the **definition in use today** during ongoing litigation over the Clean Water Rule
- **Many, but not all, waters are considered to be WUS:**
 - Waters used/historically used/susceptible to use in interstate commerce
 - Interstate waters and wetlands
 - All other waters ... the use, degradation, or destruction of which could affect interstate commerce
 - Impoundments of WUS
 - Tributaries of above waters
 - Territorial seas
 - Wetlands adjacent to above waters
 - Excludes: prior converted cropland, waste treatment systems



WUS at the Supreme Court

- ***Riverside Bayview*** (1985): Adjacent wetlands to TNWs are properly part of WUS
- ***SWANCC*** (2001): Presence of migratory birds by itself not enough to make “other waters” WUS
- ***Rapanos*** (2006): Tributaries, adjacent wetlands. Split decision on what WUS includes
 - Scalia: “Relatively permanent” or at least seasonal waters; wetlands with a “continuous surface connection”
 - Kennedy: Waters with a “significant nexus” affecting physical, chemical, or biological integrity of downstream waters
 - All: WUS includes more than just waters that are navigable